

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: April 28, 2022

<p>* * * * *</p> <p>ARIANA C. WHITE,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>SECRETARY OF HEALTH AND HUMAN SERVICES,</p> <p style="text-align: center;">Respondent.</p> <p>* * * * *</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>Unpublished</p> <p>No. 15-1521V</p> <p>Special Master Gowen</p> <p>Decision on Damages; Proffer Transverse myelitis.</p>
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Anthony M. Carr, Shaheen & Gordon, Dover, New Hampshire, for petitioner.
Adriana R. Teitel, U.S. Department of Justice, Washington, D.C., for respondent.

DECISION ON DAMAGES¹

On December 15, 2015, Heidi and David White, on behalf of A.C.W. (“petitioner”) filed a petition in the National Vaccine Injury Compensation Program.² Petition (ECF No. 1). Petitioner’s alleged that as a result of A.C.W.’s³ receiving the human papillomavirus vaccine (“HPV”) she suffered transverse myelitis. *Id.* On December 19, 2019, the undersigned issued a Ruling on Entitlement, finding that petitioners are entitled to compensation. Ruling on Entitlement, dated Dec. 19, 2019 (ECF No. 101).

On April 28, 2022, respondent filed a Proffer of Award of Compensation, which indicates petitioner’s agreement to compensation on the terms set forth therein. Proffer (ECF No. 145). The proffer is attached hereto as Appendix A.

¹ Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I intend to post it on the website of the United States Court of Federal Claims. The court’s website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. Before the opinion is posted on the court’s website, each party has 14 days to file a motion requesting redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). An objecting party must provide the court with a proposed redacted version of the opinion. *Id.* If neither party files a motion for redaction within 14 days, the opinion will be posted on the court’s website without any changes. *Id.*

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to 34 (2012) (hereinafter “Vaccine Act” or “the Act”). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

³ On May 14, 2021, the case was recaptioned, reflecting that Ms. Ariana C. White had reached the age of majority. Order (ECF No. 135).

Consistent with the terms stated in the attached Proffer, I hereby award the following in compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a):

- 1) A lump sum payment of \$659,315.47, representing compensation for life care expenses in the first year after judgment (\$9,600.32), partial lost future earnings (\$418,786.17), pain and suffering (\$215,000.00), and past unreimbursable expenses (\$15,928.98) in the form of a check payable to petitioner, Ariana C. White.
- 2) An amount sufficient to purchase the annuity contract as described in Section II (B) of the Proffer attached herein, as Appendix A, paid to the life insurance company from which the annuity will be purchased.

The Clerk of the Court is directed to **ENTER JUDGMENT** in accordance with this decision.⁴

IT IS SO ORDERED.

s/Thomas L. Gowen

Thomas L. Gowen
Special Master

⁴ Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

ARIANA C. WHITE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 15-1521V
Special Master Gowen
ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On December 15, 2015, Heidi and David White (“petitioners”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended, 42 U.S.C. § 300aa-10 *et seq.* (“Vaccine Act” or “Act”) on behalf on their then-minor daughter A.C.W., alleging that a human papillomavirus vaccination (“HPV vaccine”) she received on July 30, 2013, caused her to suffer injuries, including transverse myelitis. On December 19, 2019, the special master issued a Ruling on Entitlement, finding that petitioners established, by a preponderance of the evidence, that the HPV vaccine administered on July 30, 2013, caused A.C.W. to develop acute inflammatory transverse myelitis. ECF No. 101. Following A.C.W.’s eighteenth birthday, petitioners moved to amend the case caption, and Ariana C. White was substituted as the petitioner. ECF No. 134, 135. Respondent now proffers the following regarding the amount of compensation to be awarded.¹

¹ The parties have no objection to the amount of the proffered award of damages. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(f), to seek review of the special master’s December 19, 2019 ruling on entitlement, finding petitioner entitled to an award under the Vaccine Act. This right accrues following issuance of the damages decision.

I. Items of Compensation

A. Life Care Items

Respondent engaged life care planner Laura E. Fox, MSN, BSN, RN, CLCP, and petitioners engaged Barbara T. Tate, RN-BC, to provide an estimation of petitioner Ariana C. White's future vaccine-injury related needs. For the purposes of this proffer, the term "vaccine related" is as described in the Special Master's Ruling on Entitlement. All items of compensation identified in the life care plan are supported by the evidence and are illustrated by the chart entitled Appendix A: Items of Compensation for petitioner, attached hereto as Tab A.² Respondent proffers that petitioner should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Tab A. Petitioner agrees.

B. Partial Lost Future Earnings

The parties agree that based upon the evidence of record, petitioner will not be fully gainfully employed in the future. Therefore, respondent proffers that petitioner should be awarded partial lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Respondent proffers that the appropriate award for petitioner's lost future earnings is \$418,786.17. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that petitioner should be awarded \$215,000.00 in actual and projected pain and suffering. This amount reflects that any award for projected pain and

² The chart at Tab A illustrates the annual benefits provided by the life care plan. The annual benefit years run from the date of judgment up to the first anniversary of the date of judgment, and every year thereafter up to the anniversary of the date of judgment.

suffering has been reduced to net present value. See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

D. Past Unreimbursable Expenses

Evidence supplied by petitioner documents the expenditure of past unreimbursable expenses related to petitioner's vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$15,928.98. Petitioner agrees.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a combination of lump sum payments and future annuity payments as described below, and request that the special master's decision and the Court's judgment award the following:³

A. A lump sum payment of \$659,315.47, representing compensation for life care expenses in the first year after judgment (\$9,600.32), partial lost future earnings (\$418,786.17), pain and suffering (\$215,000.00), and past unreimbursable expenses (\$15,928.98) in the form of a check payable to petitioner, Ariana C. White.

B. An amount sufficient to purchase the annuity contract,⁴ subject to the conditions described below, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A attached hereto, paid to the life insurance company⁵ from

³ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, lost future earnings, and future pain and suffering.

⁴ In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

⁵ The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

which the annuity will be purchased.⁶ Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent years shall be provided through respondent's purchase of an annuity, which annuity shall make payments directly to petitioner, Ariana C. White, only so long as petitioner is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the chart at Tab A describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all non-medical life care items, and a five percent (5%) growth rate should be applied to all medical life care items. Thus, the benefits illustrated in the chart at Tab A that are to be paid through annuity payments should grow as follows: four percent (4%) compounded annually from the date of judgment for non-medical items, and five percent (5%) compounded annually from the date of judgment for medical items. Petitioner agrees.

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- a. A. M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
 - b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
 - c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
 - d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

2. Life-Contingent Annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as she, Ariana C. White, is alive at the time that a particular payment is due. Written notice shall be provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Ariana C. White's death.

3. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

III. Summary of Recommended Payments Following Judgment

- A. Lump sum paid to petitioner, Ariana C. White: **\$659,315.47**
- B. An amount sufficient to purchase the annuity contract described above in section II. B.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

⁶ Petitioner authorizes the disclosure of certain documents filed by the petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

s/Adriana Teitel

ADRIANA TEITEL

Trial Attorney

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Dated: April 28, 2022

[illegible]

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Year 3	Compensation Year 4	Compensation Year 5	Compensation Year 6	Compensation Years 7-9	Compensation Year 10
				2022	2023	2024	2025	2026	2027	2028-2030	2031
Grab Bars	4%			21.99	4.40	4.40	4.40	4.40	4.40	4.40	4.40
Allowance for Assistive Devices	4%			100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Hand Held Shower	4%			30.00	4.29	4.29	4.29	4.29	4.29	4.29	4.29
Case Manager	4%			2,064.00			2,064.00				
Gym Membership	4%			132.00	132.00	132.00	396.00	396.00	396.00	540.00	540.00
Ankle Brace	4%			15.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00
Custom Finger Brace	4%			139.00	46.33	46.33	46.33	46.33	46.33	46.33	46.33
Shoe Inserts OTC	4%			34.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00
X-rays Cervical	5%	*									
X-rays Thoracic	5%	*									
Uroflowmetry	5%	*							423.00	84.60	84.60
Ultrasound of Bladder & Kidneys	5%	*							543.00	108.60	108.60
X-ray RT Knee	5%	*									
MRI RT Knee	5%	*									
X-ray RT Ankle	5%	*									
MRI RT Ankle	5%	*									
RT Knee Arthroscopy	5%	*									
Tendon Stabilization Procedures	5%	*									
Homemaker	4%		M			2,580.00	2,580.00	2,580.00	2,580.00	2,580.00	2,580.00
Partial Lost Future Earnings				418,786.17							
Pain and Suffering				215,000.00							
Past Unreimbursable Expenses				15,928.98							
Annual Totals				659,315.47	4,060.56	6,640.56	8,968.56	6,904.56	8,543.26	7,914.46	9,414.46

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner, Ariana C. White, for partial lost future earnings (\$418,786.17), pain and suffering (\$215,000.00), past unreimbursable expenses (\$15,928.98), and Yr 1 life care expenses (\$9,600.32): \$659,315.47.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.

[illegible]

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Years 11-14	Compensation Year 15	Compensation Years 16-19	Compensation Year 20	Compensation Years 21-24	Compensation Year 25	Compensation Years 26-29	Compensation Year 30
				2032-2035	2036	2037-2040	2041	2042-2045	2046	2047-2050	2051
Grab Bars	4%			4.40	4.40	4.40	4.40	4.40	4.40	4.40	4.40
Allowance for Assistive Devices	4%			100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Hand Held Shower	4%			4.29	4.29	4.29	4.29	4.29	4.29	4.29	4.29
Case Manager	4%						2,064.00				
Gym Membership	4%			540.00	540.00	540.00	540.00	540.00	540.00	540.00	540.00
Ankle Brace	4%			3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00
Custom Finger Brace	4%			46.33	46.33	46.33	46.33	46.33	46.33	46.33	46.33
Shoe Inserts OTC	4%			17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00
X-rays Cervical	5%	*									
X-rays Thoracic	5%	*									
Uroflowmetry	5%	*		84.60	84.60	84.60	84.60	84.60	84.60	84.60	84.60
Ultrasound of Bladder & Kidneys	5%	*		108.60	108.60	108.60	108.60	108.60	108.60	108.60	108.60
X-ray RT Knee	5%	*									
MRI RT Knee	5%	*									
X-ray RT Ankle	5%	*									
MRI RT Ankle	5%	*									
RT Knee Arthroscopy	5%	*									
Tendon Stabilization Procedures	5%	*									
Homemaker	4%		M	2,580.00	2,580.00	2,580.00	2,580.00	2,580.00	2,580.00	2,580.00	2,580.00
Partial Lost Future Earnings											
Pain and Suffering											
Past Unreimbursable Expenses											
Annual Totals				7,914.46	9,414.46	7,914.46	11,478.46	7,914.46	9,414.46	7,914.46	9,414.46

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner, Ariana C. White, for partial lost future earnings (\$418,786.17), pain and suffering (\$215,000.00), past unreimbursable expenses (\$15,928.98), and Yr 1 life care expenses (\$9,600.32): \$659,315.47.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Years 31-41	Compensation Years 42-44	Compensation Years 45-Life
				2052-2062	2063-2065	2066-Life
Insurance MOP	5%					
Medicare Part B Deductible	5%					233.00
Medicare Supp	5%		M			2,001.48
Medicare Part D	5%		M			211.08
Neurology/ Physiatriy Visits	5%	*		281.00	281.00	
Orthopaedic - Hand	5%	*		424.00	424.00	
Orthopaedic - Knee, Ankle, Other	5%	*		281.00	281.00	
Urology	5%	*		281.00	281.00	
Physiatry Eval	5%	*				
Psychiatry	5%	*				
Assistive Tech Eval	5%	*				
Assistive Tech	5%	*				
Neuropsych Eval	4%					
PT Eval	4%	*		233.00	233.00	
OT Eval	4%	*		252.00	252.00	
PT	4%	*		753.00	753.00	
OT	4%	*		777.00	777.00	
Psychotherapy and/or Cognitive Behavior	4%	*				
Gabapentin 300 mgs	5%	*		229.50	229.50	
Gabapentin 100 mgs	5%	*		132.00	132.00	
Zoloft	5%	*		270.00	270.00	
Sertraline	5%	*		259.20	259.20	
Pill Cutter	4%			4.00	4.00	4.00
Hydrazone	5%					
Bisacodyl	4%			5.04	5.04	5.04
Docusate Sodium	4%			51.10	51.10	51.10
Miralax	4%			26.52	26.52	26.52
Ibuprofen	4%			12.48	12.48	12.48
Antacid	4%			5.20	5.20	5.20
Driving Eval	4%					
Adaptive Driving Training	4%					
Hand Controls	4%			140.00	140.00	140.00
Shower Chair	4%			9.20	9.20	9.20

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Years 31-41 2052-2062	Compensation Years 42-44 2063-2065	Compensation Years 45-Life 2066-Life
Grab Bars	4%			4.40	4.40	4.40
Allowance for Assistive Devices	4%			100.00	100.00	100.00
Hand Held Shower	4%			4.29	4.29	4.29
Case Manager	4%					
Gym Membership	4%			540.00	540.00	
Ankle Brace	4%			3.00	3.00	3.00
Custom Finger Brace	4%			46.33	46.33	46.33
Shoe Inserts OTC	4%			17.00	17.00	17.00
X-rays Cervical	5%	*				
X-rays Thoracic	5%	*				
Uroflowmetry	5%	*		84.60		
Ultrasound of Bladder & Kidneys	5%	*		108.60		
X-ray RT Knee	5%	*				
MRI RT Knee	5%	*				
X-ray RT Ankle	5%	*				
MRI RT Ankle	5%	*				
RT Knee Arthroscopy	5%	*				
Tendon Stabilization Procedures	5%	*				
Homemaker	4%		M	2,580.00	2,580.00	2,580.00
Partial Lost Future Earnings						
Pain and Suffering						
Past Unreimbursable Expenses						
Annual Totals				7,914.46	7,721.26	5,454.12

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner, Ariana C. White, for partial lost future earnings (\$418,786.17), pain and suffering (\$215,000.00), past unreimbursable expenses (\$15,928.98), and Yr 1 life care expenses (\$9,600.32): \$659,315.47.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.